

INITIATIVE 833

I, Sam Reed, Secretary of State of the State of Washington and custodian of its seal, hereby certify that, according to the records on file in my office, the attached copy of Initiative Measure No. 833 to the People is a true and correct copy as it was received by this office.

1 AN ACT Relating to violent sex offenses; amending RCW 9.94A.540,
2 9.94A.570, 9.94A.650, 9.94A.660, 9.94A.700, 9.94A.710, 9.94A.800, and
3 9A.76.115; reenacting and amending RCW 9.94A.030 and 9.94A.660;
4 prescribing penalties; providing an effective date; and providing an
5 expiration date.

6 BE IT ENACTED BY THE PEOPLE OF THE STATE OF WASHINGTON:

7 **Sec. 1.** RCW 9.94A.030 and 2002 c 175 s 5 and 2002 c 107 s 2 are
8 each reenacted and amended to read as follows:

9 Unless the context clearly requires otherwise, the definitions in
10 this section apply throughout this chapter.

11 (1) "Board" means the indeterminate sentence review board created
12 under chapter 9.95 RCW.

13 (2) "Collect," or any derivative thereof, "collect and remit," or
14 "collect and deliver," when used with reference to the department,
15 means that the department, either directly or through a collection
16 agreement authorized by RCW 9.94A.760, is responsible for monitoring
17 and enforcing the offender's sentence with regard to the legal
18 financial obligation, receiving payment thereof from the offender, and,

1 consistent with current law, delivering daily the entire payment to the
2 superior court clerk without depositing it in a departmental account.

3 (3) "Commission" means the sentencing guidelines commission.

4 (4) "Community corrections officer" means an employee of the
5 department who is responsible for carrying out specific duties in
6 supervision of sentenced offenders and monitoring of sentence
7 conditions.

8 (5) "Community custody" means that portion of an offender's
9 sentence of confinement in lieu of earned release time or imposed
10 pursuant to RCW 9.94A.505(2)(b), 9.94A.650 through 9.94A.670,
11 9.94A.690, 9.94A.700 through 9.94A.715, or 9.94A.545, served in the
12 community subject to controls placed on the offender's movement and
13 activities by the department. For offenders placed on community
14 custody for crimes committed on or after July 1, 2000, the department
15 shall assess the offender's risk of reoffense and may establish and
16 modify conditions of community custody, in addition to those imposed by
17 the court, based upon the risk to community safety.

18 (6) "Community custody range" means the minimum and maximum period
19 of community custody included as part of a sentence under RCW
20 9.94A.715, as established by the commission or the legislature under
21 RCW 9.94A.850, for crimes committed on or after July 1, 2000.

22 (7) "Community placement" means that period during which the
23 offender is subject to the conditions of community custody and/or
24 postrelease supervision, which begins either upon completion of the
25 term of confinement (postrelease supervision) or at such time as the
26 offender is transferred to community custody in lieu of earned release.
27 Community placement may consist of entirely community custody, entirely
28 postrelease supervision, or a combination of the two.

29 (8) "Community restitution" means compulsory service, without
30 compensation, performed for the benefit of the community by the
31 offender.

32 (9) "Community supervision" means a period of time during which a
33 convicted offender is subject to crime-related prohibitions and other
34 sentence conditions imposed by a court pursuant to this chapter or RCW
35 16.52.200(6) or 46.61.524. Where the court finds that any offender has
36 a chemical dependency that has contributed to his or her offense, the
37 conditions of supervision may, subject to available resources, include
38 treatment. For purposes of the interstate compact for out-of-state
39 supervision of parolees and probationers, RCW 9.95.270, community

1 supervision is the functional equivalent of probation and should be
2 considered the same as probation by other states.

3 (10) "Confinement" means total or partial confinement.

4 (11) "Conviction" means an adjudication of guilt pursuant to Titles
5 10 or 13 RCW and includes a verdict of guilty, a finding of guilty, and
6 acceptance of a plea of guilty.

7 (12) "Crime-related prohibition" means an order of a court
8 prohibiting conduct that directly relates to the circumstances of the
9 crime for which the offender has been convicted, and shall not be
10 construed to mean orders directing an offender affirmatively to
11 participate in rehabilitative programs or to otherwise perform
12 affirmative conduct. However, affirmative acts necessary to monitor
13 compliance with the order of a court may be required by the department.

14 (13) "Criminal history" means the list of a defendant's prior
15 convictions and juvenile adjudications, whether in this state, in
16 federal court, or elsewhere.

17 (a) The history shall include, where known, for each conviction (i)
18 whether the defendant has been placed on probation and the length and
19 terms thereof; and (ii) whether the defendant has been incarcerated and
20 the length of incarceration.

21 (b) A conviction may be removed from a defendant's criminal history
22 only if it is vacated pursuant to RCW 9.96.060, 9.94A.640, 9.95.240, or
23 a similar out-of-state statute, or if the conviction has been vacated
24 pursuant to a governor's pardon.

25 (c) The determination of a defendant's criminal history is distinct
26 from the determination of an offender score. A prior conviction that
27 was not included in an offender score calculated pursuant to a former
28 version of the sentencing reform act remains part of the defendant's
29 criminal history.

30 (14) "Day fine" means a fine imposed by the sentencing court that
31 equals the difference between the offender's net daily income and the
32 reasonable obligations that the offender has for the support of the
33 offender and any dependents.

34 (15) "Day reporting" means a program of enhanced supervision
35 designed to monitor the offender's daily activities and compliance with
36 sentence conditions, and in which the offender is required to report
37 daily to a specific location designated by the department or the
38 sentencing court.

39 (16) "Department" means the department of corrections.

1 (17) "Determinate sentence" means a sentence that states with
2 exactitude the number of actual years, months, or days of total
3 confinement, of partial confinement, of community supervision, the
4 number of actual hours or days of community restitution work, or
5 dollars or terms of a legal financial obligation. The fact that an
6 offender through earned release can reduce the actual period of
7 confinement shall not affect the classification of the sentence as a
8 determinate sentence.

9 (18) "Disposable earnings" means that part of the earnings of an
10 offender remaining after the deduction from those earnings of any
11 amount required by law to be withheld. For the purposes of this
12 definition, "earnings" means compensation paid or payable for personal
13 services, whether denominated as wages, salary, commission, bonuses, or
14 otherwise, and, notwithstanding any other provision of law making the
15 payments exempt from garnishment, attachment, or other process to
16 satisfy a court-ordered legal financial obligation, specifically
17 includes periodic payments pursuant to pension or retirement programs,
18 or insurance policies of any type, but does not include payments made
19 under Title 50 RCW, except as provided in RCW 50.40.020 and 50.40.050,
20 or Title 74 RCW.

21 (19) "Drug offender sentencing alternative" is a sentencing option
22 available to persons convicted of a felony offense other than a violent
23 offense ~~((or))~~, a sex offense and who are eligible for the option under
24 RCW 9.94A.660, or a violent sex offense.

25 (20) "Drug offense" means:

26 (a) Any felony violation of chapter 69.50 RCW except possession of
27 a controlled substance (RCW 69.50.401(d)) or forged prescription for a
28 controlled substance (RCW 69.50.403);

29 (b) Any offense defined as a felony under federal law that relates
30 to the possession, manufacture, distribution, or transportation of a
31 controlled substance; or

32 (c) Any out-of-state conviction for an offense that under the laws
33 of this state would be a felony classified as a drug offense under (a)
34 of this subsection.

35 (21) "Earned release" means earned release from confinement as
36 provided in RCW 9.94A.728.

37 (22) "Escape" means:

38 (a) Sexually violent predator escape (RCW 9A.76.115), escape in the
39 first degree (RCW 9A.76.110), escape in the second degree (RCW

1 9A.76.120), willful failure to return from furlough (RCW 72.66.060),
2 willful failure to return from work release (RCW 72.65.070), or willful
3 failure to be available for supervision by the department while in
4 community custody (RCW 72.09.310); or

5 (b) Any federal or out-of-state conviction for an offense that
6 under the laws of this state would be a felony classified as an escape
7 under (a) of this subsection.

8 (23) "Felony traffic offense" means:

9 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW
10 46.61.522), eluding a police officer (RCW 46.61.024), or felony hit-
11 and-run injury-accident (RCW 46.52.020(4)); or

12 (b) Any federal or out-of-state conviction for an offense that
13 under the laws of this state would be a felony classified as a felony
14 traffic offense under (a) of this subsection.

15 (24) "Fine" means a specific sum of money ordered by the sentencing
16 court to be paid by the offender to the court over a specific period of
17 time.

18 (25) "First-time offender" means any person who has no prior
19 convictions for a felony and is eligible for the first-time offender
20 waiver under RCW 9.94A.650.

21 (26) "Home detention" means a program of partial confinement
22 available to offenders wherein the offender is confined in a private
23 residence subject to electronic surveillance.

24 (27) "Legal financial obligation" means a sum of money that is
25 ordered by a superior court of the state of Washington for legal
26 financial obligations which may include restitution to the victim,
27 statutorily imposed crime victims' compensation fees as assessed
28 pursuant to RCW 7.68.035, court costs, county or interlocal drug funds,
29 court-appointed attorneys' fees, and costs of defense, fines, and any
30 other financial obligation that is assessed to the offender as a result
31 of a felony conviction. Upon conviction for vehicular assault while
32 under the influence of intoxicating liquor or any drug, RCW
33 46.61.522(1)(b), or vehicular homicide while under the influence of
34 intoxicating liquor or any drug, RCW 46.61.520(1)(a), legal financial
35 obligations may also include payment to a public agency of the expense
36 of an emergency response to the incident resulting in the conviction,
37 subject to RCW 38.52.430.

38 (28) "Most serious offense" means any of the following felonies or
39 a felony attempt to commit any of the following felonies:

1 (a) Any felony defined under any law as a class A felony or
2 criminal solicitation of or criminal conspiracy to commit a class A
3 felony;

4 (b) Assault in the second degree;

5 (c) Assault of a child in the second degree;

6 (d) Child molestation in the second degree;

7 (e) Controlled substance homicide;

8 (f) Extortion in the first degree;

9 (g) Incest when committed against a child under age fourteen;

10 (h) Indecent liberties;

11 (i) Kidnapping in the second degree;

12 (j) Leading organized crime;

13 (k) Manslaughter in the first degree;

14 (l) Manslaughter in the second degree;

15 (m) Promoting prostitution in the first degree;

16 (n) Rape in the third degree;

17 (o) Robbery in the second degree;

18 (p) Sexual exploitation;

19 (q) Vehicular assault, when caused by the operation or driving of
20 a vehicle by a person while under the influence of intoxicating liquor
21 or any drug or by the operation or driving of a vehicle in a reckless
22 manner;

23 (r) Vehicular homicide, when proximately caused by the driving of
24 any vehicle by any person while under the influence of intoxicating
25 liquor or any drug as defined by RCW 46.61.502, or by the operation of
26 any vehicle in a reckless manner;

27 (s) Any other class B felony offense with a finding of sexual
28 motivation;

29 (t) Any other felony with a deadly weapon verdict under RCW
30 9.94A.602;

31 (u) Any felony offense in effect at any time prior to December 2,
32 1993, that is comparable to a most serious offense under this
33 subsection, or any federal or out-of-state conviction for an offense
34 that under the laws of this state would be a felony classified as a
35 most serious offense under this subsection;

36 (v)(i) A prior conviction for indecent liberties under RCW
37 9A.88.100(1) (a), (b), and (c), chapter 260, Laws of 1975 1st ex. sess.
38 as it existed until July 1, 1979, RCW 9A.44.100(1) (a), (b), and (c) as

1 it existed from July 1, 1979, until June 11, 1986, and RCW 9A.44.100(1)
2 (a), (b), and (d) as it existed from June 11, 1986, until July 1, 1988;
3 (ii) A prior conviction for indecent liberties under RCW
4 9A.44.100(1)(c) as it existed from June 11, 1986, until July 1, 1988,
5 if: (A) The crime was committed against a child under the age of
6 fourteen; or (B) the relationship between the victim and perpetrator is
7 included in the definition of indecent liberties under RCW
8 9A.44.100(1)(c) as it existed from July 1, 1988, through July 27, 1997,
9 or RCW 9A.44.100(1) (d) or (e) as it existed from July 25, 1993,
10 through July 27, 1997.

11 (29) "Nonviolent offense" means an offense which is not a violent
12 offense.

13 (30) "Offender" means a person who has committed a felony
14 established by state law and is eighteen years of age or older or is
15 less than eighteen years of age but whose case is under superior court
16 jurisdiction under RCW 13.04.030 or has been transferred by the
17 appropriate juvenile court to a criminal court pursuant to RCW
18 13.40.110. Throughout this chapter, the terms "offender" and
19 "defendant" are used interchangeably.

20 (31) "Partial confinement" means confinement for no more than one
21 year in a facility or institution operated or utilized under contract
22 by the state or any other unit of government, or, if home detention or
23 work crew has been ordered by the court, in an approved residence, for
24 a substantial portion of each day with the balance of the day spent in
25 the community. Partial confinement includes work release, home
26 detention, work crew, and a combination of work crew and home
27 detention.

28 (32) "Persistent offender" is an offender who:

29 (a)(i) Has been convicted in this state of any felony considered a
30 most serious offense; and

31 (ii) Has, before the commission of the offense under (a) of this
32 subsection, been convicted as an offender on at least two separate
33 occasions, whether in this state or elsewhere, of felonies that under
34 the laws of this state would be considered most serious offenses and
35 would be included in the offender score under RCW 9.94A.525; provided
36 that of the two or more previous convictions, at least one conviction
37 must have occurred before the commission of any of the other most
38 serious offenses for which the offender was previously convicted;
39 ((or))

1 (b)(i) Has been convicted of: (A) (~~Rape in the first degree, rape~~
2 ~~of a child in the first degree, child molestation in the first degree,~~
3 ~~rape in the second degree, rape of a child in the second degree, or~~
4 ~~indecent liberties by forcible compulsion;~~ (B)) Any of the following
5 offenses with a finding of sexual motivation: Murder in the first
6 degree, murder in the second degree, homicide by abuse, (~~kidnapping in~~
7 ~~the first degree, kidnapping in the second degree,~~) assault in the
8 first degree, assault in the second degree, assault of a child in the
9 first degree, or burglary in the first degree; or (~~(C)~~) (B) an
10 attempt to commit any crime listed in this subsection (32)(b)(i); and

11 (ii) Has, before the commission of the offense under (b)(i) of this
12 subsection, been convicted as an offender on at least one occasion,
13 whether in this state or elsewhere, of an offense listed in (b)(i) of
14 this subsection or any federal or out-of-state offense or offense under
15 prior Washington law that is comparable to the offenses listed in
16 (b)(i) of this subsection(~~(.—A conviction for rape of a child in the~~
17 ~~first degree constitutes a conviction under (b)(i) of this subsection~~
18 ~~only when the offender was sixteen years of age or older when the~~
19 ~~offender committed the offense.—A conviction for rape of a child in~~
20 ~~the second degree constitutes a conviction under (b)(i) of this~~
21 ~~subsection only when the offender was eighteen years of age or older~~
22 ~~when the offender committed the offense))~~; or

23 (c) Has been convicted of a violent sex offense.

24 (33) "Postrelease supervision" is that portion of an offender's
25 community placement that is not community custody.

26 (34) "Restitution" means a specific sum of money ordered by the
27 sentencing court to be paid by the offender to the court over a
28 specified period of time as payment of damages. The sum may include
29 both public and private costs.

30 (35) "Risk assessment" means the application of an objective
31 instrument supported by research and adopted by the department for the
32 purpose of assessing an offender's risk of reoffense, taking into
33 consideration the nature of the harm done by the offender, place and
34 circumstances of the offender related to risk, the offender's
35 relationship to any victim, and any information provided to the
36 department by victims. The results of a risk assessment shall not be
37 based on unconfirmed or unconfirmable allegations.

38 (36) "Serious traffic offense" means:

(a) Driving while under the influence of intoxicating liquor or any drug (RCW 46.61.502), actual physical control while under the influence of intoxicating liquor or any drug (RCW 46.61.504), reckless driving (RCW 46.61.500), or hit-and-run an attended vehicle (RCW 46.52.020(5)); or

(b) Any federal, out-of-state, county, or municipal conviction for an offense that under the laws of this state would be classified as a serious traffic offense under (a) of this subsection.

(37) "Serious violent offense" is a subcategory of violent offense and means:

(a)(i) Murder in the first degree;

(ii) Homicide by abuse;

(iii) Murder in the second degree;

(iv) Manslaughter in the first degree;

(v) Assault in the first degree;

(vi) Kidnapping in the first degree;

(vii) Rape in the first degree;

(viii) Assault of a child in the first degree; or

(ix) An attempt, criminal solicitation, or criminal conspiracy to commit one of these felonies; or

(b) Any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a serious violent offense under (a) of this subsection.

(38) "Sex offense" means:

(a)(i) A felony that is a violation of chapter 9A.44 RCW other than RCW 9A.44.130(11);

(ii) A violation of RCW 9A.64.020;

(iii) A felony that is a violation of chapter 9.68A RCW other than RCW 9.68A.070 or 9.68A.080; or

(iv) A felony that is, under chapter 9A.28 RCW, a criminal attempt, criminal solicitation, or criminal conspiracy to commit such crimes;

(b) Any conviction for a felony offense in effect at any time prior to July 1, 1976, that is comparable to a felony classified as a sex offense in (a) of this subsection;

(c) A felony with a finding of sexual motivation under RCW 9.94A.835 or 13.40.135; or

(d) Any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a sex offense under (a) of this subsection.

1 (39) "Sexual motivation" means that one of the purposes for which
2 the defendant committed the crime was for the purpose of his or her
3 sexual gratification.

4 (40) "Standard sentence range" means the sentencing court's
5 discretionary range in imposing a nonappealable sentence.

6 (41) "Statutory maximum sentence" means the maximum length of time
7 for which an offender may be confined as punishment for a crime as
8 prescribed in chapter 9A.20 RCW, RCW 9.92.010, the statute defining the
9 crime, or other statute defining the maximum penalty for a crime.

10 (42) "Total confinement" means confinement inside the physical
11 boundaries of a facility or institution operated or utilized under
12 contract by the state or any other unit of government for twenty-four
13 hours a day, or pursuant to RCW 72.64.050 and 72.64.060.

14 (43) "Transition training" means written and verbal instructions
15 and assistance provided by the department to the offender during the
16 two weeks prior to the offender's successful completion of the work
17 ethic camp program. The transition training shall include instructions
18 in the offender's requirements and obligations during the offender's
19 period of community custody.

20 (44) "Victim" means any person who has sustained emotional,
21 psychological, physical, or financial injury to person or property as
22 a direct result of the crime charged.

23 (45) "Violent offense" means:

24 (a) Any of the following felonies:

25 (i) Any felony defined under any law as a class A felony or an
26 attempt to commit a class A felony;

27 (ii) Criminal solicitation of or criminal conspiracy to commit a
28 class A felony;

29 (iii) Manslaughter in the first degree;

30 (iv) Manslaughter in the second degree;

31 (v) Indecent liberties if committed by forcible compulsion;

32 (vi) Kidnapping in the second degree;

33 (vii) Arson in the second degree;

34 (viii) Assault in the second degree;

35 (ix) Assault of a child in the second degree;

36 (x) Extortion in the first degree;

37 (xi) Robbery in the second degree;

38 (xii) Drive-by shooting;

(xiii) Vehicular assault, when caused by the operation or driving of a vehicle by a person while under the influence of intoxicating liquor or any drug or by the operation or driving of a vehicle in a reckless manner; and

(xiv) Vehicular homicide, when proximately caused by the driving of any vehicle by any person while under the influence of intoxicating liquor or any drug as defined by RCW 46.61.502, or by the operation of any vehicle in a reckless manner;

(b) Any conviction for a felony offense in effect at any time prior to July 1, 1976, that is comparable to a felony classified as a violent offense in (a) of this subsection; and

(c) Any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a violent offense under (a) or (b) of this subsection.

(46) "Violent sex offense" means:

(a) Any of the following felonies:

(i) Rape in the first degree;

(ii) Rape in the second degree;

(iii) Rape of a child in the first degree;

(iv) Rape of a child in the second degree;

(v) Child molestation in the first degree;

(vi) Kidnapping in the first degree; and

(vii) Indecent liberties by forcible compulsion;

(b) A felony that is, under chapter 9A.28 RCW, a class A felony that is a criminal attempt, criminal solicitation, or criminal conspiracy to commit a crime listed in (a) of this subsection;

(c) Any conviction for a felony in effect at any time prior to July 1, 1976, that is comparable to a felony classified as a violent sex offense in (a) or (b) of this subsection; and

(d) Any felony with a finding of sexual motivation under RCW 9.94A.835 or 13.40.135; or any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a violent sex offense under (a) or (b) of this subsection.

(47) "Work crew" means a program of partial confinement consisting of civic improvement tasks for the benefit of the community that complies with RCW 9.94A.725.

~~((47))~~ (48) "Work ethic camp" means an alternative incarceration program as provided in RCW 9.94A.690 designed to reduce recidivism and

1 lower the cost of corrections by requiring offenders to complete a
2 comprehensive array of real-world job and vocational experiences,
3 character-building work ethics training, life management skills
4 development, substance abuse rehabilitation, counseling, literacy
5 training, and basic adult education.

6 ~~((+48+))~~ (49) "Work release" means a program of partial confinement
7 available to offenders who are employed or engaged as a student in a
8 regular course of study at school.

9 **Sec. 2.** RCW 9.94A.540 and 2001 2nd sp.s. c 12 s 315 are each
10 amended to read as follows:

11 (1) The following minimum terms of total confinement are mandatory
12 and shall not be varied or modified under RCW 9.94A.535:

13 (a) An offender convicted of the crime of murder in the first
14 degree shall be sentenced to a term of total confinement not less than
15 twenty years.

16 (b) An offender convicted of the crime of assault in the first
17 degree or assault of a child in the first degree where the offender
18 used force or means likely to result in death or intended to kill the
19 victim shall be sentenced to a term of total confinement not less than
20 five years.

21 (c) An offender convicted of the crime of rape in the first degree
22 shall be sentenced to a term of ~~((total confinement not less than five
23 years))~~ life in prison without the possibility of parole.

24 (d) An offender convicted of the crime of sexually violent predator
25 escape shall be sentenced to a ~~((minimum))~~ term of ~~((total confinement
26 not less than sixty months))~~ life in prison without the possibility of
27 parole.

28 (e) An offender convicted of a violent sex offense as defined in
29 RCW 9.94A.030 shall be sentenced to a term of life in prison without
30 the possibility of parole.

31 (2) During such minimum terms of total confinement, no offender
32 subject to the provisions of this section is eligible for community
33 custody, earned release time, furlough, home detention, partial
34 confinement, work crew, work release, or any other form of early
35 release authorized under RCW 9.94A.728, or any other form of authorized
36 leave of absence from the correctional facility while not in the direct
37 custody of a corrections officer. The provisions of this subsection
38 shall not apply: (a) In the case of an offender in need of emergency

1 medical treatment; or (b) (~~for the purpose of commitment to an~~
2 ~~inpatient treatment facility in the case of an offender convicted of~~
3 ~~the crime of rape in the first degree; or (c))~~) for an extraordinary
4 medical placement when authorized under RCW 9.94A.728(4).

5 **Sec. 3.** RCW 9.94A.570 and 2000 c 28 s 6 are each amended to read
6 as follows:

7 Notwithstanding the statutory maximum sentence or any other
8 provision of this chapter, a persistent offender shall be sentenced to
9 a term of total confinement for life without the possibility of release
10 or, when authorized by RCW 10.95.030 for the crime of aggravated murder
11 in the first degree, sentenced to death. In addition, no offender
12 subject to this section may be eligible for community custody, earned
13 release time, furlough, home detention, partial confinement, work crew,
14 work release, or any other form of release as defined under RCW
15 9.94A.728 (1), (2), (3), (4), (6), (8), or (9), or any other form of
16 authorized leave from a correctional facility while not in the direct
17 custody of a corrections officer or officers, except(~~(1)~~)) in the
18 case of an offender in need of emergency medical treatment(~~(1) or (2)~~
19 ~~for the purpose of commitment to an inpatient treatment facility in the~~
20 ~~case of an offender convicted of the crime of rape in the first~~
21 ~~degree~~)).

22 **Sec. 4.** RCW 9.94A.650 and 2002 c 175 s 9 are each amended to read
23 as follows:

24 (1) This section applies to offenders who have never been
25 previously convicted of a felony in this state, federal court, or
26 another state, and who have never participated in a program of deferred
27 prosecution for a felony, and who are convicted of a felony that is
28 not:

29 (a) Classified as a violent offense (~~(or a)~~), sex offense, or
30 violent sex offense under this chapter;

31 (b) Manufacture, delivery, or possession with intent to manufacture
32 or deliver a controlled substance classified in Schedule I or II that
33 is a narcotic drug or flunitrazepam classified in Schedule IV;

34 (c) Manufacture, delivery, or possession with intent to deliver a
35 methamphetamine, its salts, isomers, and salts of its isomers as
36 defined in RCW 69.50.206(d)(2); or

1 (d) The selling for profit of any controlled substance or
2 counterfeit substance classified in Schedule I, RCW 69.50.204, except
3 leaves and flowering tops of marihuana.

4 (2) In sentencing a first-time offender the court may waive the
5 imposition of a sentence within the standard sentence range and impose
6 a sentence which may include up to ninety days of confinement in a
7 facility operated or utilized under contract by the county and a
8 requirement that the offender refrain from committing new offenses.
9 The sentence may also include a term of community supervision or
10 community custody as specified in subsection (3) of this section,
11 which, in addition to crime-related prohibitions, may include
12 requirements that the offender perform any one or more of the
13 following:

14 (a) Devote time to a specific employment or occupation;

15 (b) Undergo available outpatient treatment for up to the period
16 specified in subsection (3) of this section, or inpatient treatment not
17 to exceed the standard range of confinement for that offense;

18 (c) Pursue a prescribed, secular course of study or vocational
19 training;

20 (d) Remain within prescribed geographical boundaries and notify the
21 community corrections officer prior to any change in the offender's
22 address or employment;

23 (e) Report as directed to a community corrections officer; or

24 (f) Pay all court-ordered legal financial obligations as provided
25 in RCW 9.94A.030 and/or perform community restitution work.

26 (3) The terms and statuses applicable to sentences under subsection
27 (2) of this section are:

28 (a) For sentences imposed on or after July 25, 1999, for crimes
29 committed before July 1, 2000, up to one year of community supervision.
30 If treatment is ordered, the period of community supervision may
31 include up to the period of treatment, but shall not exceed two years;
32 and

33 (b) For crimes committed on or after July 1, 2000, up to one year
34 of community custody unless treatment is ordered, in which case the
35 period of community custody may include up to the period of treatment,
36 but shall not exceed two years. Any term of community custody imposed
37 under this section is subject to conditions and sanctions as authorized
38 in this section and in RCW 9.94A.715 (2) and (3).

(4) The department shall discharge from community supervision any offender sentenced under this section before July 25, 1999, who has served at least one year of community supervision and has completed any treatment ordered by the court.

Sec. 5. RCW 9.94A.660 and 2002 c 175 s 10 are each amended to read as follows:

(1) An offender is eligible for the special drug offender sentencing alternative if:

(a) The offender is convicted of a felony that is not a violent offense ~~((or))~~, sex offense, or violent sex offense and the violation does not involve a sentence enhancement under RCW 9.94A.510 (3) or (4);

(b) The offender has no current or prior convictions for a sex offense ~~((or))~~, violent offense, or violent sex offense in this state, another state, or the United States;

(c) For a violation of the Uniform Controlled Substances Act under chapter 69.50 RCW or a criminal solicitation to commit such a violation under chapter 9A.28 RCW, the offense involved only a small quantity of the particular controlled substance as determined by the judge upon consideration of such factors as the weight, purity, packaging, sale price, and street value of the controlled substance; and

(d) The offender has not been found by the United States attorney general to be subject to a deportation detainer or order and does not become subject to a deportation order during the period of the sentence.

(2) If the standard sentence range is greater than one year and the sentencing court determines that the offender is eligible for this alternative and that the offender and the community will benefit from the use of the alternative, the judge may waive imposition of a sentence within the standard sentence range and impose a sentence that must include a period of total confinement in a state facility for one-half of the midpoint of the standard sentence range. During incarceration in the state facility, offenders sentenced under this subsection shall undergo a comprehensive substance abuse assessment and receive, within available resources, treatment services appropriate for the offender. The treatment services shall be designed by the division of alcohol and substance abuse of the department of social and health services, in cooperation with the department of corrections.

The court shall also impose:

1 (a) The remainder of the midpoint of the standard range as a term
2 of community custody which must include appropriate substance abuse
3 treatment in a program that has been approved by the division of
4 alcohol and substance abuse of the department of social and health
5 services;

6 (b) Crime-related prohibitions including a condition not to use
7 illegal controlled substances;

8 (c) A requirement to submit to urinalysis or other testing to
9 monitor that status; and

10 (d) A term of community custody pursuant to RCW 9.94A.715 to be
11 imposed upon failure to complete or administrative termination from the
12 special drug offender sentencing alternative program.

13 The court may prohibit the offender from using alcohol or
14 controlled substances and may require that the monitoring for
15 controlled substances be conducted by the department or by a treatment
16 alternatives to street crime program or a comparable court or agency-
17 referred program. The offender may be required to pay thirty dollars
18 per month while on community custody to offset the cost of monitoring.
19 In addition, the court shall impose three or more of the following
20 conditions:

21 (i) Devote time to a specific employment or training;

22 (ii) Remain within prescribed geographical boundaries and notify
23 the court or the community corrections officer before any change in the
24 offender's address or employment;

25 (iii) Report as directed to a community corrections officer;

26 (iv) Pay all court-ordered legal financial obligations;

27 (v) Perform community restitution work;

28 (vi) Stay out of areas designated by the sentencing court;

29 (vii) Such other conditions as the court may require such as
30 affirmative conditions.

31 (3) If the offender violates any of the sentence conditions in
32 subsection (2) of this section or is found by the United States
33 attorney general to be subject to a deportation order, a violation
34 hearing shall be held by the department unless waived by the offender.

35 (a) If the department finds that conditions have been willfully
36 violated, the offender may be reclassified to serve the remaining
37 balance of the original sentence.

38 (b) If the department finds that the offender is subject to a valid
39 deportation order, the department may administratively terminate the

1 offender from the program and reclassify the offender to serve the
2 remaining balance of the original sentence.

3 (4) The department shall determine the rules for calculating the
4 value of a day fine based on the offender's income and reasonable
5 obligations which the offender has for the support of the offender and
6 any dependents. These rules shall be developed in consultation with
7 the administrator for the courts, the office of financial management,
8 and the commission.

9 (5) An offender who fails to complete the special drug offender
10 sentencing alternative program or who is administratively terminated
11 from the program shall be reclassified to serve the unexpired term of
12 his or her sentence as ordered by the sentencing court and shall be
13 subject to all rules relating to earned release time. An offender who
14 violates any conditions of supervision as defined by the department
15 shall be sanctioned. Sanctions may include, but are not limited to,
16 reclassifying the offender to serve the unexpired term of his or her
17 sentence as ordered by the sentencing court. If an offender is
18 reclassified to serve the unexpired term of his or her sentence, the
19 offender shall be subject to all rules relating to earned release time.

20 **Sec. 6.** RCW 9.94A.660 and 2002 c 290 s 20 and 2002 c 175 s 10 are
21 each reenacted and amended to read as follows:

22 (1) An offender is eligible for the special drug offender
23 sentencing alternative if:

24 (a) The offender is convicted of a felony that is not a violent
25 offense ~~((or))~~, sex offense, or violent sex offense and the violation
26 does not involve a sentence enhancement under RCW 9.94A.533 (3) or (4);

27 (b) The offender has no current or prior convictions for a sex
28 offense ~~((or))~~, violent offense, or violent sex offense in this state,
29 another state, or the United States;

30 (c) For a violation of the Uniform Controlled Substances Act under
31 chapter 69.50 RCW or a criminal solicitation to commit such a violation
32 under chapter 9A.28 RCW, the offense involved only a small quantity of
33 the particular controlled substance as determined by the judge upon
34 consideration of such factors as the weight, purity, packaging, sale
35 price, and street value of the controlled substance; and

36 (d) The offender has not been found by the United States attorney
37 general to be subject to a deportation detainer or order and does not

1 become subject to a deportation order during the period of the
2 sentence.

3 (2) If the standard sentence range is greater than one year and the
4 sentencing court determines that the offender is eligible for this
5 alternative and that the offender and the community will benefit from
6 the use of the alternative, the judge may waive imposition of a
7 sentence within the standard sentence range and impose a sentence that
8 must include a period of total confinement in a state facility for one-
9 half of the midpoint of the standard sentence range. During
10 incarceration in the state facility, offenders sentenced under this
11 subsection shall undergo a comprehensive substance abuse assessment and
12 receive, within available resources, treatment services appropriate for
13 the offender. The treatment services shall be designed by the division
14 of alcohol and substance abuse of the department of social and health
15 services, in cooperation with the department of corrections.

16 The court shall also impose:

17 (a) The remainder of the midpoint of the standard range as a term
18 of community custody which must include appropriate substance abuse
19 treatment in a program that has been approved by the division of
20 alcohol and substance abuse of the department of social and health
21 services;

22 (b) Crime-related prohibitions including a condition not to use
23 illegal controlled substances;

24 (c) A requirement to submit to urinalysis or other testing to
25 monitor that status; and

26 (d) A term of community custody pursuant to RCW 9.94A.715 to be
27 imposed upon failure to complete or administrative termination from the
28 special drug offender sentencing alternative program.

29 The court may prohibit the offender from using alcohol or
30 controlled substances and may require that the monitoring for
31 controlled substances be conducted by the department or by a treatment
32 alternatives to street crime program or a comparable court or agency-
33 referred program. The offender may be required to pay thirty dollars
34 per month while on community custody to offset the cost of monitoring.
35 In addition, the court shall impose three or more of the following
36 conditions:

37 (i) Devote time to a specific employment or training;

1 (ii) Remain within prescribed geographical boundaries and notify
2 the court or the community corrections officer before any change in the
3 offender's address or employment;

4 (iii) Report as directed to a community corrections officer;

5 (iv) Pay all court-ordered legal financial obligations;

6 (v) Perform community restitution work;

7 (vi) Stay out of areas designated by the sentencing court;

8 (vii) Such other conditions as the court may require such as
9 affirmative conditions.

10 (3) If the offender violates any of the sentence conditions in
11 subsection (2) of this section or is found by the United States
12 attorney general to be subject to a deportation order, a violation
13 hearing shall be held by the department unless waived by the offender.

14 (a) If the department finds that conditions have been willfully
15 violated, the offender may be reclassified to serve the remaining
16 balance of the original sentence.

17 (b) If the department finds that the offender is subject to a valid
18 deportation order, the department may administratively terminate the
19 offender from the program and reclassify the offender to serve the
20 remaining balance of the original sentence.

21 (4) The department shall determine the rules for calculating the
22 value of a day fine based on the offender's income and reasonable
23 obligations which the offender has for the support of the offender and
24 any dependents. These rules shall be developed in consultation with
25 the administrator for the courts, the office of financial management,
26 and the commission.

27 (5) An offender who fails to complete the special drug offender
28 sentencing alternative program or who is administratively terminated
29 from the program shall be reclassified to serve the unexpired term of
30 his or her sentence as ordered by the sentencing court and shall be
31 subject to all rules relating to earned release time. An offender who
32 violates any conditions of supervision as defined by the department
33 shall be sanctioned. Sanctions may include, but are not limited to,
34 reclassifying the offender to serve the unexpired term of his or her
35 sentence as ordered by the sentencing court. If an offender is
36 reclassified to serve the unexpired term of his or her sentence, the
37 offender shall be subject to all rules relating to earned release time.

1 **Sec. 7.** RCW 9.94A.700 and 2002 c 175 s 13 are each amended to read
2 as follows:

3 When a court sentences an offender to a term of total confinement
4 in the custody of the department for any of the offenses specified in
5 this section other than a violent sex offense, the court shall also
6 sentence the offender to a term of community placement as provided in
7 this section.

8 (1) The court shall order a one-year term of community placement
9 for the following:

10 (a) A sex offense or a serious violent offense committed after July
11 1, 1988, but before July 1, 1990; or

12 (b) An offense committed on or after July 1, 1988, but before July
13 25, 1999, that is:

14 (i) Assault in the second degree;

15 (ii) Assault of a child in the second degree;

16 (iii) A crime against persons where it is determined in accordance
17 with RCW 9.94A.602 that the offender or an accomplice was armed with a
18 deadly weapon at the time of commission; or

19 (iv) A felony offense under chapter 69.50 or 69.52 RCW not
20 sentenced under RCW 9.94A.660.

21 (2) The court shall sentence the offender to a term of community
22 placement of two years or up to the period of earned release awarded
23 pursuant to RCW 9.94A.728, whichever is longer, for:

24 (a) An offense categorized as a sex offense committed on or after
25 July 1, 1990, but before June 6, 1996, including those sex offenses
26 also included in other offense categories;

27 (b) A serious violent offense other than a sex offense committed on
28 or after July 1, 1990, but before July 1, 2000; or

29 (c) A vehicular homicide or vehicular assault committed on or after
30 July 1, 1990, but before July 1, 2000.

31 (3) The community placement ordered under this section shall begin
32 either upon completion of the term of confinement or at such time as
33 the offender is transferred to community custody in lieu of earned
34 release. When the court sentences an offender to the statutory maximum
35 sentence then the community placement portion of the sentence shall
36 consist entirely of the community custody to which the offender may
37 become eligible. Any period of community custody actually served shall
38 be credited against the community placement portion of the sentence.

(4) Unless a condition is waived by the court, the terms of any community placement imposed under this section shall include the following conditions:

(a) The offender shall report to and be available for contact with the assigned community corrections officer as directed;

(b) The offender shall work at department-approved education, employment, or community restitution, or any combination thereof;

(c) The offender shall not possess or consume controlled substances except pursuant to lawfully issued prescriptions;

(d) The offender shall pay supervision fees as determined by the department; and

(e) The residence location and living arrangements shall be subject to the prior approval of the department during the period of community placement.

(5) As a part of any terms of community placement imposed under this section, the court may also order one or more of the following special conditions:

(a) The offender shall remain within, or outside of, a specified geographical boundary;

(b) The offender shall not have direct or indirect contact with the victim of the crime or a specified class of individuals;

(c) The offender shall participate in crime-related treatment or counseling services;

(d) The offender shall not consume alcohol; or

(e) The offender shall comply with any crime-related prohibitions.

(6) An offender convicted of a felony sex offense against a minor victim after June 6, 1996, shall comply with any terms and conditions of community placement imposed by the department relating to contact between the sex offender and a minor victim or a child of similar age or circumstance as a previous victim.

(7) Prior to or during community placement, upon recommendation of the department, the sentencing court may remove or modify any conditions of community placement so as not to be more restrictive.

Sec. 8. RCW 9.94A.710 and 2000 c 28 s 24 are each amended to read as follows:

(1) When a court sentences a person to the custody of the department for an offense categorized as a sex offense other than a violent sex offense, including those sex offenses also included in

1 other offense categories, committed on or after June 6, 1996, and
2 before July 1, 2000, the court shall, in addition to other terms of the
3 sentence, sentence the offender to community custody for three years or
4 up to the period of earned release awarded pursuant to RCW 9.94A.728,
5 whichever is longer. The community custody shall begin either upon
6 completion of the term of confinement or at such time as the offender
7 is transferred to community custody in lieu of earned release.

8 (2) Unless a condition is waived by the court, the terms of
9 community custody imposed under this section shall be the same as those
10 provided for in RCW 9.94A.700(4) and may include those provided for in
11 RCW 9.94A.700(5). As part of any sentence that includes a term of
12 community custody imposed under this section, the court shall also
13 require the offender to comply with any conditions imposed by the
14 department under RCW 9.94A.720.

15 (3) At any time prior to the completion of a sex offender's term of
16 community custody, if the court finds that public safety would be
17 enhanced, the court may impose and enforce an order extending any or
18 all of the conditions imposed pursuant to this section for a period up
19 to the maximum allowable sentence for the crime as it is classified in
20 chapter 9A.20 RCW, regardless of the expiration of the offender's term
21 of community custody. If a violation of a condition extended under
22 this subsection occurs after the expiration of the offender's term of
23 community custody, it shall be deemed a violation of the sentence for
24 the purposes of RCW 9.94A.631 and may be punishable as contempt of
25 court as provided for in RCW 7.21.040.

26 **Sec. 9.** RCW 9.94A.800 and 2000 c 28 s 34 are each amended to read
27 as follows:

28 (1) When an offender commits any felony sex offense on or after
29 July 1, 1987, and on or before July 1, 1990, and is sentenced to a term
30 of confinement of more than one year but less than six years, the
31 sentencing court may, on its own motion or on the motion of the
32 offender or the state, request the department to evaluate whether the
33 offender is amenable to treatment and the department may place the
34 offender in a treatment program within a correctional facility operated
35 by the department.

36 Except for an offender who has been convicted of a violation of RCW
37 9A.44.040 or 9A.44.050 or a violent sex offense, if the offender
38 completes the treatment program before the expiration of his or her

1 term of confinement, the department may request the court to convert
2 the balance of confinement to community supervision and to place
3 conditions on the offender including crime-related prohibitions and
4 requirements that the offender perform any one or more of the
5 following:

6 (a) Devote time to a specific employment or occupation;

7 (b) Remain within prescribed geographical boundaries and notify the
8 court or the community corrections officer prior to any change in the
9 offender's address or employment;

10 (c) Report as directed to the court and a community corrections
11 officer;

12 (d) Undergo available outpatient treatment.

13 If the offender violates any of the terms of his or her community
14 supervision, the court may order the offender to serve out the balance
15 of his or her community supervision term in confinement in the custody
16 of the department.

17 Nothing in this subsection shall confer eligibility for such
18 programs for offenders convicted and sentenced for a sex offense
19 committed prior to July 1, 1987.

20 (2) Offenders convicted and sentenced for a sex offense committed
21 prior to July 1, 1987, may, subject to available funds, request an
22 evaluation by the department to determine whether they are amenable to
23 treatment. If the offender is determined to be amenable to treatment,
24 the offender may request placement in a treatment program within a
25 correctional facility operated by the department. Placement in such
26 treatment program is subject to available funds.

27 **Sec. 10.** RCW 9A.76.115 and 2001 2nd sp.s. c 12 s 360 are each
28 amended to read as follows:

29 (1) A person is guilty of sexually violent predator escape if:

30 (a) Having been found to be a sexually violent predator and
31 confined to the special commitment center or another secure facility
32 under court order, the person escapes from the secure facility;

33 (b) Having been found to be a sexually violent predator and being
34 under an order of conditional release, the person leaves or remains
35 absent from the state of Washington without prior court authorization;
36 or

37 (c) Having been found to be a sexually violent predator and being
38 under an order of conditional release, the person: (i) Without

1 authorization, leaves or remains absent from his or her residence,
2 place of employment, educational institution, or authorized outing;
3 (ii) tampers with his or her electronic monitoring device or removes it
4 without authorization; or (iii) escapes from his or her escort.

5 (2) Sexually violent predator escape is a class A felony ((with a
6 ~~minimum sentence of sixty months,~~) and shall be sentenced ((under RCW
7 ~~9.94A.712~~)) to a term of life in prison without the possibility of
8 parole.

9 NEW SECTION. Sec. 11. Section 5 of this act expires July 1, 2004.

10 NEW SECTION. Sec. 12. Section 6 of this act takes effect July 1,
11 2004.

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